

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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PAMELA GOLDSTEIN,  
ELLYN & TONY BERK, as Administrators  
of the Estate of Winifred Berk, and PAUL  
BENJAMIN, on behalf of themselves  
and all others similarly situated,

**ANSWER TO THIRD  
AMENDED COMPLAINT**

Index No. 60767/2018

Plaintiffs,

Hon. Linda S. Jamieson

-against-

HOULIHAN/LAWRENCE INC.,

Defendant.

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Defendant Houlihan Lawrence, Inc. (“Houlihan Lawrence”), by and through its attorneys,  
Collier Halpern & Newberg, LLP and Barnes & Thornburg LLP, as and for its Answer to the  
Third Amended Complaint dated June 10, 2019, hereby responds as follows:

1. No response to paragraphs 1, 2, 13, 14, 15, 16, 20, 21, 89, 90, 91, 92, 95, 96, and  
98 is necessary as each allegation calls for a legal conclusion. To the extent a response is  
required, Houlihan Lawrence denies the allegations set forth therein.

2. With respect to paragraph 3, denies knowledge and information sufficient to form  
a belief as to the truth of the allegations set forth therein, except admits that on or about May 22,  
2017, Pamela Goldstein purchased the identified property and that different Houlihan Lawrence  
agents represented the buyer and the seller.

3. With respect to paragraph 4, denies knowledge and information sufficient to form  
a belief as to the truth of the allegations set forth therein, except admits that the identified  
property was sold on or about June 30, 2014 and that different Houlihan Lawrence agents  
represented the buyer and the seller.

4. With respect to paragraph 5, denies knowledge and information sufficient to form

a belief as to the truth of the allegations set forth therein, except admits that in or around July 2016, Paul Benjamin bought the identified property and that different Houlihan Lawrence agents represented the buyer and the seller.

5. With respect to paragraph 6, admits the allegations set forth therein, except denies knowledge and information sufficient to form a belief as to the meaning of “full-service” as used in paragraph 6 and denies that it was purchased directly by HomeServices of America, Inc.

6. No response to paragraph 7 is necessary as it calls for a legal conclusion, and to the extent a response is required, Houlihan Lawrence admits that this Court has jurisdiction.

7. No response to paragraph 8 is necessary as it calls for a legal conclusion, and to the extent a response is required, Houlihan Lawrence denies knowledge and information sufficient to form a belief as to where each named Plaintiff is currently domiciled.

8. No response to paragraph 9 is necessary as it calls for a legal conclusion, and to the extent a response is required, Houlihan Lawrence admits that venue is proper in this Court.

9. No response to paragraph 10 is necessary as it calls for a legal conclusion, and to the extent a response is required, Houlihan Lawrence denies the allegations set forth therein, except admits that real estate agents may owe clients certain fiduciary duties depending on a number of factors.

10. No response to paragraph 11 is necessary as it calls for a legal conclusion, and to the extent a response is required, Houlihan Lawrence denies the allegations set forth therein, except admits that real estate brokers that act for the buyer and seller in the same transaction may, under certain circumstances, be referred to as dual agents.

11. No response to paragraphs 17, 18, and 19 is necessary as each allegation calls for a legal conclusion, and to the extent a response is required, Houlihan Lawrence denies the

allegations set forth therein, and respectfully refers the Court to the referenced statute for the language thereof.

12. With respect to paragraphs 22, 23, 24, 35, 56, 57, 59, 73, 74, and 86 denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.

13. With respect to paragraphs 12, 25, 26, 27, 28, 29, 30, 31, 32, 33, 36, 37, 38, 39, 40, 41, 42, 45, 46, 47, 48, 50, 51, 52, 53, 60, 64, 65, 67, 68, 69, 76, 80, 81, 82, 83, 84, 87, 99, 100, 101, 102, 103, 113, 114, and 115, Houlihan Lawrence denies the allegations set forth therein.

14. Denies the premise of paragraph 34 – i.e., Houlihan Lawrence denies that it breached fiduciary duties and engaged in consumer-oriented misconduct. Because the premise is inaccurate, the remaining allegations make no sense, but to the extent a response is nevertheless required Houlihan Lawrence denies the same.

15. With respect to paragraphs 43, 62, 78, 97, and 111, Houlihan Lawrence repeats and realleges its responses to each and every allegation as if those paragraphs were more fully set forth at length herein.

16. With respect to paragraph 44, denies the allegations set forth therein, except admits that on or about May 22, 2017, Pamela Goldstein purchased the identified property for the identified price.

17. With respect to paragraph 49, Houlihan Lawrence denies the allegations set forth therein, except admits that the statutory disclosure form that Pamela Goldstein received identified Cezimbra as affiliated with Houlihan Lawrence, that it indicated that Cezimbra was representing Goldstein as “Buyer’s agent,” and that it was marked to request Goldstein’s advance

informed consent to dual agency with designated sales agents.

18. With respect to paragraphs 54 and 66, Houlihan Lawrence admits the allegations set forth therein.

19. With respect to paragraph 55, Houlihan Lawrence denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein, except admits that Gino Bello led the identified team.

20. With respect to paragraph 58, Houlihan Lawrence denies the allegations set forth therein except admits that it did not disclose its internal compensation structure to Goldstein.

21. With respect to paragraph 61, Houlihan Lawrence admits the allegations set forth in the first sentence and denies knowledge and information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 61.

22. No response to paragraph 63 is necessary as it calls for a legal conclusion. To the extent a response is required, Houlihan Lawrence denies knowledge and information sufficient to form a belief as to whether the Berks were “duly appointed by order of the New York State Surrogate’s Court” and admits that on or about June 30, 2014, the Berks sold the identified property at the identified price; and denies all remaining allegations in paragraph 63.

23. With respect to paragraph 70, Houlihan Lawrence denies the allegations set forth therein, except admits that the quoted language appears in a “Premium Marketing Plan For: 190 Davis Avenue White Plains, NY 10605” and respectfully refers the Court to that document for a full and accurate recitation of its contents.

24. With respect to paragraphs 71 and 72, Houlihan Lawrence denies the allegations set forth therein, except admits that 190 Davis Avenue was not listed on the multiple listing service.

25. With respect to paragraph 75, Houlihan Lawrence denies the allegations set forth therein, except admits that it did not disclose its internal compensation structure to the Berks.

26. With respect to paragraph 77, Houlihan Lawrence admits the allegations set forth in the first sentence and denies knowledge and information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 77.

27. With respect to paragraph 79, Houlihan Lawrence denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein, except admits that in or around July 2016, Paul Benjamin bought the identified property for the identified price.

28. With respect to paragraph 85, Houlihan Lawrence denies the allegations set forth therein, except admits that it did not disclose its internal compensation structure to Benjamin.

29. With respect to paragraph 88, Houlihan Lawrence admits the allegations set forth in the first sentence and denies knowledge and information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 88.

30. No response is necessary to the allegations set forth in paragraphs 93 and 94 as they set forth Plaintiffs' request for class certification. To the extent a response is required, Houlihan Lawrence denies that Plaintiffs are entitled to class certification and denies each and every allegation set forth therein.

31. No response is necessary to the allegations set forth in paragraphs 104, 105, 106, 107, 108, 109, and 110 as the Second Cause of Action has been dismissed in its entirety pursuant to the Court's Order dated April 8, 2019 and located at NYSCEF Doc. No. 370, and Houlihan Lawrence otherwise denies each and every allegation set forth therein.

32. No response is necessary to the allegations set forth in paragraph 112 as it calls

for a legal conclusion, and to the extent a response is required, Houlihan Lawrence denies the allegations set forth therein, and respectfully refers the Court to the referenced statute for the language thereof.

33. No response is necessary to the allegations set forth in paragraphs 116, 117, 118, and 119 as the Fourth Cause of Action has been dismissed in its entirety pursuant to the Court's order dated April 8, 2019 and located at NYSCEF Doc. No. 370, and Houlihan Lawrence otherwise denies the referenced paragraphs' allegations.

34. No response is necessary to the allegations set forth in paragraph 120 because it contains Plaintiffs' prayer for relief. Houlihan Lawrence denies Plaintiffs are entitled to the relief sought in their prayer for relief.

#### FIRST AFFIRMATIVE DEFENSE

35. Plaintiffs may not pursue this action to the extent they consented to, acquiesced to, or ratified Houlihan Lawrence's allegedly improper representation.

#### SECOND AFFIRMATIVE DEFENSE

36. Plaintiffs are not entitled to restitution of any portion of the commission that they did not pay.

#### THIRD AFFIRMATIVE DEFENSE

37. The applicable statutory limitation periods, including the three-year period in CPLR 214(2), bar the named Plaintiffs' claims in whole or in part.

#### FOURTH AFFIRMATIVE DEFENSE

38. The doctrine of laches bars or limits this action.

FIFTH AFFIRMATIVE DEFENSE

39. The Real Estate Settlement Procedures Act—codified in Title 12, Chapter 27 of the United States Code—preempts the named Plaintiffs’ claims in whole or in part.

SIXTH AFFIRMATIVE DEFENSE

40. CPLR 901(b) bars or limits the extent to which this lawsuit may be “maintained as a class action.”

SEVENTH AFFIRMATIVE DEFENSE

41. The named Plaintiffs failed to exhaust administrative remedies, including any such remedies set forth in New York Real Property Law Article 12-A.

EIGHTH AFFIRMATIVE DEFENSE

42. Houlihan Lawrence provided disclosure forms in accordance with New York Real Property Law Section 443.

NINTH AFFIRMATIVE DEFENSE

43. Plaintiffs fail to state a cause of action against Houlihan Lawrence.

TENTH AFFIRMATIVE DEFENSE

44. Plaintiffs and the putative class have suffered no damages.

ELEVENTH AFFIRMATIVE DEFENSE

45. Certain members of the putative class have signed arbitration agreements precluding participation in this lawsuit.

TWELFTH AFFIRMATIVE DEFENSE

46. Houlihan Lawrence did not cause any injury to the named Plaintiffs or to the putative class.

THIRTEENTH AFFIRMATIVE DEFENSE

47. The doctrine of estoppel bars or limits this action.

FOURTEENTH AFFIRMATIVE DEFENSE

48. The named Plaintiffs and putative class have suffered no “actual damages” within the meaning of New York General Business Law Section 349.

FIFTEENTH AFFIRMATIVE DEFENSE

49. The doctrine of waiver bars or limits this action.

WHEREFORE, Houlihan Lawrence respectfully requests that a Judgment be entered dismissing the remainder of the Third Amended Complaint with prejudice, together with such other, further and different relief as the Court may deem just and proper in the circumstances, and the costs and disbursements of this action.

Dated: White Plains, New York  
July 1, 2019

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